

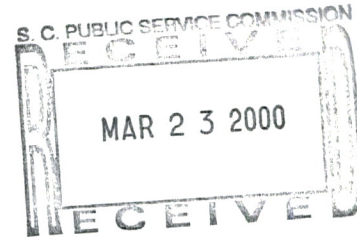
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March 23, 2000

The Honorable Gary E. Walsh  
Executive Director  
Public Service Commission of SC  
Post Office Drawer 11649  
Columbia, South Carolina 29211



Re: Petition by E.Spire Communications, Inc. on  
behalf of Itself and its Operating Subsidiaries in  
South Carolina, for Arbitration of an  
Interconnection with BellSouth Telecommunications,  
Inc. Pursuant to the Communications Act of 1934,  
as Amended  
Docket No. 2000-040-C

Dear Mr. Walsh:

Enclosed please find for filing in the above-referenced  
matter an original and ten copies of the Motion to Dismiss  
those Portions of the e.spire Petition Seeking Arbitration of  
Directory Publication Issues in the above-referenced matter.

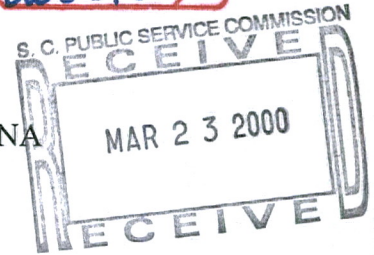
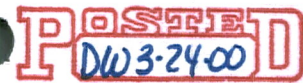
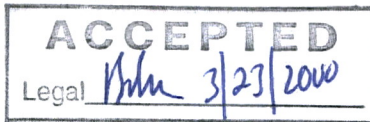
Sincerely,

A handwritten signature in black ink that reads "CN Watson".

Caroline N. Watson

CNW/nml  
Enclosure

cc: Russell B. Shetterly, Esquire  
Brad E. Mutschelknaus, Esquire  
Mr. Riley M. Murphy  
Florence P. Belser, Esquire



BEFORE THE  
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

In the Matter of: )  
)  
Petition by e.spire Communications, Inc., )  
On Behalf of Itself and its Operating )  
Subsidiaries in South Carolina, for )  
Arbitration of an Interconnection Agreement )  
With BellSouth Telecommunications, Inc. )  
Pursuant to Section 252(b) of the )  
Communications Act of 1934, as Amended. )

Docket No. 2000-040-C



**MOTION TO DISMISS THOSE PORTIONS OF THE E.SPIRE PETITION  
SEEKING ARBITRATION OF DIRECTORY PUBLICATION ISSUES**

BellSouth Telecommunications, Inc. ("BellSouth") hereby moves the Commission to dismiss Issues 58, 60, 61, 62, and 63 from the Petition for Arbitration filed by e.spire Communications, Inc. ("e.spire"). The basis for BellSouth's Motion is twofold: (1) the identified issues involve directory publication matters which are not appropriate subjects of a Section 252 arbitration under the Telecommunications Act of 1996 (the "Act"); and (2) BellSouth Advertising & Publication Corporation ("BAPCO"), the corporate entity that publishes directories on behalf of BellSouth and other LECs in BellSouth's region, is not an incumbent local exchange carrier and thus is not subject to the requirements of the Act, including the obligation to arbitrate pursuant to Section 252.

**INTRODUCTION**

By including Issues 58, 60, 61, 62 and 63 in its Petition, e.spire is seeking to impose upon BAPCO, through the indirect mechanism of e.spire's compulsory arbitration with BellSouth, extraneous terms and conditions for the provision of directory publication for which e.spire could not reach agreement during independent and private

negotiations with BAPCO. These issues, however, are not appropriate for arbitration and should be dismissed from this proceeding.

e.spire may compel arbitration only with respect to those parties and those matters for which compulsory arbitration is provided under the Act. *See* 47 U.S.C. 252. BAPCO is not such a party, and directory publication issues are not such matters. While e.spire may seek arbitration against BellSouth of certain interconnection, resale and unbundling requirements under the Act, e.spire may not seek arbitration of directory publication issues against BAPCO, an affiliate of BellSouth that is a separate company not under the ownership or control of BellSouth. Moreover, the Act contains only one relevant reference related to directory publication: Section 271(c)(2)(B)(viii) provides that a competing carrier's telephone exchange service customers receive white pages directory listings. This requirement, however, is *not* a duty of a telecommunications carrier or local exchange carrier as defined in Section 251 of the Act and thus is not an appropriate subject of a Section 252 arbitration. Rather, the directory listing requirement is one of the fourteen checklist items identified in Section 271 of the Act that a Bell Operating Company ("BOC") must meet in order to gain authority to provide interLATA services. The checklist requirements contained in Section 271 are not subject to compulsory arbitration under Section 252. For these reasons, discussed more fully below, the Commission should dismiss Issues 58, 60, 61, 62 and 63.

### DISCUSSION

- A. The scope of compulsory arbitration under Section 252 of the Act is limited to the requirements of interconnection, resale of services or unbundling of elements set forth in Section 251.**
  - 1. Section 252 arbitration is limited to those obligations set forth in Section 251 of the Act.**

The Commission should dismiss Issues 58, 60, 61, 62 and 63 from the Petition because directory publication issues are not obligations of Section 251 of the Act and thus cannot be arbitrated under Section 252 of the Act. Section 252 of the Act provides procedures for negotiating and arbitrating agreements. The scope of those procedures is instructive:

**Voluntary Negotiations** – Upon receiving a request for interconnection, services or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier ... without regard to the standards set forth in subsections (b) and (c) of section 251. *Section 252(a)(1) (emphasis added).*

**Agreements Arrived at Through Compulsory Arbitration** – During the period from the 135<sup>th</sup> day to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues. *Section 252(b) (emphasis added).*

**Standards for Arbitration** – In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall – (1) ensure that such resolution and conditions meet the requirements of section 251 ... *Section 252(c)(1) (emphasis added).*

The plain language of these provisions makes clear that the scope of a request for a voluntary agreement (or a compulsory arbitration) is limited to requests for interconnection, resale of services or unbundling of network elements as identified in Section 251 of the Act. Not surprisingly, therefore, the standard for arbitration expressly stated in the Act is for this Commission to ensure that the requirements of Section 251 are met. The scope of the arbitration before this Commission, therefore, is limited to the unresolved issues regarding interconnection, resale of services or unbundling of network

elements as those obligations are defined in Section 251, and does not include directory publication issues.

**2. Section 251 does not encompass directory publication issues.**

Simply, directory publication issues are not addressed in Section 251 of the Act. Section 251 describes in detail the multiple obligations of a telecommunications company or a local exchange carrier, but none of those obligations includes directory publication. For example, Sections 251(b)(1) and 251(c)(4) describe the obligations of a local exchange carrier with respect to resale. The “resale” to which these sections apply is resale of telecommunications services. The term “telecommunications service” is defined in the Act as “the offering of telecommunications for a fee directly to the public...” 47 U.S.C. § 153(51). Telecommunications is defined as:

The transmission, between or among, points specified by the users, of information of the user’s choosing, without change in the form or content of the information as sent and received.

47 U.S.C. § 153(48). BAPCO offers directory publication services to all local exchange carriers as a private contractual relationship. Such services are not telecommunication services as defined by the Act. Therefore, the resale duties of a local exchange carrier as described in Section 251 do not apply to BAPCO.

Moreover, Section 251(c)(2) describes the duty of an incumbent local exchange carrier with respect to interconnection. That duty is to provide

Interconnection with the local exchange carrier’s network...for the transmission and routing of telephone exchange service and exchange access.

Telephone exchange service and exchange access are not directory publication and thus are not services provided by BAPCO. Therefore, the interconnection obligations of Section 251(c)(2) do not apply to BAPCO.

Finally, Section 251(c)(3) defines the duty of an incumbent local exchange carrier with regard to unbundled access. That duty is to provide

Nondiscriminatory access to network elements on an unbundled basis at any technically feasible point...in a manner that allows requesting carriers to combine such elements in order to provide such telecommunication service.

As previously demonstrated, BAPCO possesses no network that is a component of providing telecommunications service, as that term is defined in the Act. The definition of network element in the Act reinforces this conclusion.<sup>1</sup> BAPCO possesses no network elements and its directory publication services are not network elements within the meaning of the Act.

It is clear that while Section 251 identifies many duties and obligations of a telecommunications carrier and a local exchange carrier, none of the duties of interconnection, resale of services or unbundled access to network elements described in Section 251 include a duty to provide directory publication services. Given the ability of LECs to contract with other directory publishers or to publish directories on their own behalf, as facilitated by Section 222 of the Act, Congress had no basis to expand the scope of arbitration under this provision. Thus, directory publication services are not subject to, and should not be considered in any, Section 252 arbitration.

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<sup>1</sup> A network element is defined as a “facility or equipment used in the provision of a telecommunications service [including] features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.” 47 U.S.C. § 153 (45).

- B. BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of Sections 251 and 252 of the Act and therefore BAPCO cannot be compelled to arbitrate publication of directories.**

The requirements of Section 251 respecting interconnection, resale of services and unbundling of network elements are the obligations of a *telecommunications carrier* and/or a *local exchange carrier*. The voluntary negotiations to be undertaken pursuant to Section 252(a)(1) and the compulsory arbitration procedure established by Section 252(b) are processes directed to a *local exchange carrier*. Clearly, BAPCO is neither a telecommunications carrier nor a local exchange carrier within the meaning of the Act, and thus is not subject to its obligations.

A telecommunications carrier is “any provider of telecommunications services.” 47 U.S.C. § 153(49). As discussed above, BAPCO does not provide telecommunications within the meaning of the Act and therefore is not a telecommunications carrier.

The Act defines a local exchange carrier as:

any person that is engaged in the provision of telephone exchange service or exchange access.

47 U.S.C. § 153(44). Telephone exchange and exchange access are defined respectively as:

service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

and

the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

47 U.S.C. §§ 153(18) and 153(41). BAPCO provides neither telephone exchange services nor exchange access. Therefore, BAPCO is not a local exchange carrier within the meaning of Sections 251 and 252 of the Act. Inasmuch as BAPCO is neither a telecommunications carrier nor a local exchange carrier, neither the requirements of Section 251 nor the compulsory arbitration provisions of Section 252 apply to it.

**C. Other Commissions In BellSouth's Region Have Dismissed Directory Publication Issues From Section 252 Arbitrations.**

Other Commissions in BellSouth's region have dismissed directory publication issues from Section 252 arbitrations on the grounds asserted herein.<sup>2</sup> For example, the Georgia Public Service Commission concluded that "the scope of compulsory arbitration under Sections 251 and 252 of the Federal Act does not encompass directory publication matters...." *Order Denying AT&T's Exception to the Hearing Officer's First Pre-Arbitration Hearing Order*, Docket No. 6801-U, 10/25/00, at 6. The Commission further held that the provisions of the Act

consistently establish that the scope of arbitration under Section 252 relates specifically to the particular terms and conditions of agreements to fulfill the duties of a LEC or incumbent LEC identified in Section 251(b)(1) through (5) and Section 251(c). The duties identified in Section 251(b) and (c) are principally duties regarding interconnection, resale of services, and access to unbundled elements. As defined by the Federal Act, those duties do not encompass matters of directory publication.

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<sup>2</sup> For completeness sake, BellSouth notes that the North Carolina Utilities Commission held that the issue of placing a logo on the cover of the directory was subject to arbitration on the grounds that BAPCO was a wholly-owned subsidiary of BellSouth. See *In the Matter of Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with BellSouth Telecommunications, Inc.*, Docket No. P-140, Sub 50, 12/23/96. North Carolina was the only state in BellSouth's region, however, to reach this conclusion. Moreover, in its Final Arbitration Order in the same docket, dated April 11, 1997, the North Carolina Commission corrected the record and found that BAPCO was an affiliate and/or agent of BellSouth, not a wholly-owned subsidiary as previously held. Thus, while the Commission did not explicitly change its ruling on the arbitrability of the directory publication issue, it did reverse the reasoning upon which that holding was based.

*Order*, at 7. Finally, the Commission held that “BAPCO does not provide telecommunications or telecommunications services within the meaning of the Federal Act, and hence is not a telecommunications carrier within the meaning of the Federal Act.” *Order*, at 10.

Similarly, the Kentucky Public Service Commission declined to address directory publication issues in the context of a Section 252 arbitration. *See Order, In the Matter of Petition By MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996*, Case No. 96-431, 11/1/96, at 2. Specifically, the Kentucky Commission held that the Section 252 arbitration “will be limited to the terms and conditions for interconnection and resale between MCI and [BST] and will not include directory publishing issues.” *Id.*

### CONCLUSION

For the aforesaid reasons, the Commission should dismiss Issues 58, 60, 61, 62 and 63 from e.spire’s arbitration Petition. Directory publication issues are not requirements of Section 251 and thus are not subject to a Section 252 arbitration. Moreover, BAPCO is not a telecommunications company or a local exchange provider under the Act, and thus is not subject to the requirements of the Act. The directory publication issues raised by e.spire, therefore, should not be considered in the context of this arbitration.

Respectfully Submitted,

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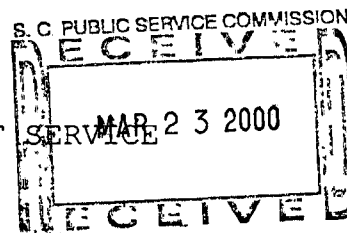
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COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC.

This 23 day of March, 2000.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )

CERTIFICATE OF SERVICE



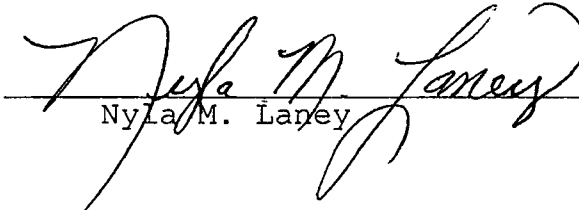
The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused the Motion to Dismiss Those Portions of the e.spire Petition Seeking Arbitration of Directory Publication Issues in Docket No. 2000-040-C to be served this March 23, 2000 by the method indicated below each addressee listed:

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